6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 228

[EPA-R01-OW-2019-0521; FRL–10014-99-Region 1]

Ocean Disposal; Designation of an Ocean Dredged Material Disposal Site for the Southern Maine, New Hampshire, and Northern Massachusetts Coastal Region

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: With the publication of this Final Rule, the Environmental Protection Agency (EPA) is designating one ocean dredged material disposal site (ODMDS), the Isles of Shoals North Disposal Site (IOSN), located in the Gulf of Maine off the coast of southern Maine and New Hampshire, pursuant to the Marine Protection, Research, and Sanctuaries Act (MPRSA). This action is necessary to serve the long-term need for an ODMDS for the possible future disposal of suitable dredged material from harbors and navigation channels in southern Maine, New Hampshire, and northern Massachusetts. The basis for this action is described herein and in the Final Environmental Assessment (FEA). The FEA identifies designation of the IOSN as the preferred alternative from the range of options considered. The Site Management and Monitoring Plan (SMMP) is provided as Appendix G of the FEA.

DATES: The Final rule is effective on [**Insert date 30 days after date of publication in the Federal Register**].

ADDRESSES: EPA has established a docket for this action under Docket Identification No. EPA-R01-OW-2019-0521, through the Federal eRulemaking Portal: https://www.regulations.gov.

Docket: Publicly available docket materials are available either electronically at regulations.gov or on the EPA Region 1 Ocean Dumping webpage at https://www.epa.gov/ocean-dumping/isles-shoals-north-disposal-site. They are also available in hard copy during normal business hours at the EPA Region 1 Library, 5 Post Office Square, Boston, MA, 02109.

The supporting document for this site designation is the *Final Environmental Assessment for Designation of an Ocean Dredged Material Disposal Site for the Southern Maine, New Hampshire, and Northern Massachusetts Coastal Region*

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SUPPLEMENTARY INFORMATION: Organization of this document. The following outline is provided to aid in locating information in this preamble.

I. Final Action

EPA is publishing this Final Rule to designate the IOSN for the purpose of providing an ocean disposal option for possible use in managing dredged material from harbors and navigation channels in the southern Maine, New Hampshire, and northern Massachusetts coastal region. The site designation is effective for an indefinite period of time. Without designation of this ODMDS, there will not be an ocean disposal site available to serve this region after December 31, 2021, when the current Congressionally-authorized term of use for the Cape Arundel Disposal Site (CADS) expires. Use of the IOSN is subject to any restrictions and procedures included in the site designation and the approved SMMP. These restrictions are based on a thorough evaluation of the site pursuant to the Ocean Dumping Regulations, potential

disposal activity expected at the site, and consideration of public review and comment. Additional restrictions may be placed on any permit or authorization to use the site.

The site designation process has been conducted pursuant to the requirements of the MPRSA, Coastal Zone Management Act (CZMA), and other applicable federal and state statutes and regulations. Compliance with these requirements is described in detail in Section VII ("Compliance with Statutory and Regulatory Requirements"). The basis for this federal action is further described in the FEA that identifies EPA designation of the IOSN as the preferred alternative. The FEA also is being released in conjunction with the publication of this Final Rule. After full consideration of public comments and extensive interagency coordination, EPA determined that the designation of IOSN will not have significant environmental impacts. Therefore, EPA is issuing a Finding of No Significant Impact (FONSI) with the FEA. The FONSI documents why the agency has concluded that no significant environmental impacts are expected to result from the action.

II. Background

On September 18, 2019, EPA published in the **Federal Register** (84 FR 49075) a proposed rule (the Proposed Rule) to designate the IOSN as an ODMDS off the coast of southern Maine and New Hampshire. In the same **Federal Register** document, EPA announced the availability for public comment of a Draft Environmental Assessment (DEA) and draft FONSI that provided a more detailed explanation of the various studies, interagency coordination, and public participation that supported the proposed action. The DEA included the draft SMMP as Appendix G. These documents were available for public comment for 30 days.

The MPRSA directs EPA to designate "sites... for [permitted] dumping that will mitigate adverse impact on the environment to the greatest extent practicable." 33 U.S.C. 1412(c). On October 1, 1986, the Administrator delegated the authority to designate ODMDS to the Regional Administrator of the Region in which the sites are located. The preferred alternative site, IOSN, is located within the area assigned to EPA Region 1. 40 CFR 1.7(b)(1). Therefore, this designation is occurring pursuant to the EPA Region 1 Administrator's delegated authority.

EPA designates ODMDS by regulation. 40 CFR 228.4(e)(1), 228.15. There are currently no EPA-designated dredged material disposal sites off the coast of southern Maine, New Hampshire, or northern Massachusetts. *See* CFR 228.15. Section 103(b) of the MPRSA, 33 U.S.C. 1413(b), provides that any ocean disposal of dredged material should occur at EPA-designated sites to the maximum extent feasible. In cases where use of an EPA-designated ocean disposal site is not feasible, the MPRSA authorizes the U.S. Army Corps of Engineers (USACE) to "select," with concurrence from EPA, an "alternative site." 33 U.S.C. 1413(b). An alternative site may not be used for more than two consecutive five-year terms. *Id*. In the absence of an EPA-designated site off the coast of southern Maine, New Hampshire, or Northern Massachusetts, the USACE previously selected an alternative site in this area: the Cape Arundel Disposal Site (CADS). USACE New England District website, https://www.nae.usace.army.mil/Missions/Disposal-Area-Monitoring-System-DAMOS/Disposal-Sites/Cape-Arundel/. However, this alternative site will no longer be available after December 31, 2021, when its Congressionally-authorized term of use expires. *See* P.L. 115-270, Section 1312.

Designation of an ODMDS by EPA does not by itself authorize the disposal at that site of dredged material from any dredging project. Designation of the IOSN would only make that

ocean site available for disposal of dredged material from specific projects after they have been permitted or authorized by the USACE pursuant to the MPRSA. Such permit or authorization will only be provided if the applicable MPRSA regulations are satisfied, which means that no other environmentally preferable, practicable alternative for managing that dredged material exists, and that evaluation of the dredged material indicates that it is suitable for ocean disposal under the MPRSA. *See* 40 CFR 227.1(b), 227.2 and 227.3; 40 CFR part 227, Subparts B and C.

The Congressionally-defined purpose of the MPRSA is to "regulate the dumping of all types of materials into ocean waters and to prevent or strictly limit the dumping into ocean waters of any material which would adversely affect human health, welfare, or amenities, or the marine environment, ecological systems, or economic potentialities." 33 U.S.C. 1301. Therefore, "no person shall transport from the United States... any material for the purpose of dumping it into ocean waters," except as authorized by permit and subject to EPA regulations. 33 U.S.C. 1411. EPA sets forth regulations implementing the MPRSA at 40 CFR parts 220-229 (Ocean Dumping Regulations). The relevant regulations are discussed in greater detail below, in the Compliance with Statutory and Regulatory Authorities section.

Under the Ocean Dumping Regulations, EPA is responsible for the management of all ocean disposal sites designated under the MPRSA. *See* 40 CFR 228.3(b). To help prevent the occurrence of unacceptable adverse impacts to public health or the environment, the MPRSA requires EPA, in conjunction with USACE, to develop a site management and monitoring plan (SMMP) for each designated ODMDS. 33 U.S.C. 1412(c)(3). As described above, EPA has developed a SMMP for the IOSN, which is included as Appendix G of the FEA. A draft of this SMMP was available for public comment. EPA is authorized to terminate or limit the use of these sites to further disposal activity if their use causes unacceptable adverse impacts. 40 CFR

228.11. Any such future terminations or limitations "will be made through promulgation of an amendment to the disposal site designation set forth in …[40 CFR Part] 228…." *Id*.

III. Purpose and Need

Periodic dredging of harbors and channels and, therefore, dredged material management, are essential for ensuring safe navigation and facilitating marine commerce. This is because the natural processes of erosion and siltation result in sediment accumulation in federal navigation channels, harbors, port facilities, marinas, and other important areas of our water bodies. Unsafe navigational conditions not only threaten public safety, but also pose an environmental threat from an increased risk of spills from vessels involved in accidents.

Economic considerations also contribute to the need for dredging (and the environmentally sound management of dredged material). There are many important navigation-dependent businesses and industries in the southern Maine, New Hampshire, and northern Massachusetts coastal region, including shipping (especially the transportation of petroleum fuels and bulk materials), recreational boating-related businesses, marine transportation, commercial and recreational fishing, interstate ferry operations, and U.S. Navy and U.S. Coast Guard facilities. These businesses and industries contribute substantially to the region's economic output, the gross state product of the bordering states, and tax revenue. Continued access to harbors, berths, and mooring areas is vital to ensuring the continued economic health of these industries, and to preserving the ability of the region to import fuels, bulk supplies, and other commodities at competitive prices and to preserve ocean access for the commercial fishing fleet. In addition, preserving navigation channels, marinas, harbors, berthing areas, and other marine resources, improves the quality of life for residents and visitors to the southern Maine, New Hampshire, and

northern Massachusetts region by facilitating recreational boating and associated activities, such as fishing and sightseeing.

The purpose of this action is to designate an ocean disposal site that will provide a long-term dredged material disposal option for dredged material from harbors and navigation channels in southern Maine, New Hampshire, and northern Massachusetts. This is necessary to ensure the viability of dredging projects needed to maintain international commerce and navigation through authorized federal navigation projects and to ensure safe vessel passage for public and private entities.

Other factors that EPA considered in determining the need for an ODMDS to serve this region include: (1) projected dredging needs for the area were calculated to be approximately 1.5 million cubic yards (mcy) of material over the next 20 years, which significantly exceeds the capacity of available practicable alternatives to ocean disposal; (2) the states of Maine and New Hampshire have expressed concern that available, practicable dredged material disposal capacity is insufficient to meet projected long-term dredging needs and asked EPA to designate a new site; (3) the historically used (from 1964-1970, according to USACE records) former Isles of Shoals Disposal Site (IOSH) was examined for potential designation, however, this former site is located in an area that contains a diversity of habitats that are not compatible with the ocean disposal of dredged material; (4) the existing CADS is a USACE short-term selected site under MPRSA section 103(b) that is scheduled to close on December 31, 2021; EPA considered designating an expanded CADS, but studies revealed that suitable areas with the capacity for an ODMDS are limited in and around CADS; and (6) the closest EPA-designated ODMDSs to the southern Maine, New Hampshire, and northern Massachusetts region are the Portland Dredged Material Disposal Site (PDS) and the Massachusetts Bay Disposal Site (MBDS), which are about

85.5 nautical miles (nmi) apart and would result in 30-40 nmi haul distances for several dredging centers in the region, rendering some dredging projects infeasible.

As one of the first steps in the site designation process, EPA, in coordination with other federal and state agencies, delineated a Zone of Siting Feasibility (ZSF). The ZSF is the geographic area from which reasonable and practicable ODMDS alternatives should be selected for evaluation. EPA's 1986 site designation guidance manual describes the factors that should be considered in delineating the ZSF and recommends locating open-water disposal sites within an economically and operationally feasible radius from areas where dredging occurs. EPA, Office of Marine and Estuarine Protection, Ocean Dumping Site Designation Delegation Handbook for Dredged Material (1986). This manual also directs EPA to consider navigational restrictions, political or other jurisdictional boundaries, the distance to the edge of the continental shelf, the feasibility of surveillance and monitoring, and operation and transportation costs. The ZSF described in Section 4 of the FEA includes the coastal waters of the southern Maine, New Hampshire, and northern Massachusetts region between Cape Porpoise, Maine, and Cape Ann, Massachusetts. These boundaries were chosen because the center point between them is roughly equidistant to the PDS to the north off Cape Elizabeth, Maine, and the MBDS to the south off Boston Harbor, Massachusetts. Factors involved in defining the ZSF include dredge cycle time, weather, and distance from harbors and navigation channels that require dredging. Adding a site roughly central to this area of the coast would result in a maximum haul distance of about 21 miles from any harbor to either the PDS, MBDS, or the new centrally located site.

EPA does not consider the PDS and MBDS to be viable options for the southern Maine, New Hampshire, and northern Massachusetts region given their distance from the ZSF, which would significantly increase the transport distance for, and duration of, ocean disposal for

dredging projects from that region. This, in turn, would greatly increase the cost of such projects and would likely render many dredging projects too expensive to conduct, thus threatening safe navigation and interfering with marine commerce and recreation. Furthermore, the greater transport distance would also be environmentally detrimental because it would entail greater energy use, increased air emissions, dredging projects of increased duration (with their own, separate, impacts), and increased risk of spills or disposal outside of the designated site ("short dumps") (FEA, Section 7.0).

Because the CADS is nearing capacity and its authorized use is expiring on December 31, 2021, EPA's ocean disposal site designation studies were designed to determine whether this site or any other sites should be designated for long-term use.

IV. Disposal Site Description

The IOSN is located in the Gulf of Maine, approximately 10.8 nmi east of Portsmouth, New Hampshire, 9.55 nmi southeast of Kittery, Maine, and 6.04 nmi northeast of Eastern Island, the closest of the Isles of Shoals. As described in Section 4 of the SMMP, the site is delineated as an 8,530 ft diameter circle on the seafloor with its center located at 70° 26.995' W and 43° 1.142' N. Water depths at the IOSN range from 295 ft on the western edge of the site to 328 ft on the eastern edge as the seafloor gradually slopes from west to east. The surficial sediments at the site are predominately soft, fine-grained silts and clays. The seafloor within the site is generally a smooth, soft-textured surface with topographic highs present outside the western, northern, and southeastern, boundaries of the site.

Three reference areas (REF-A, REF-B, and REF-C), to be used for site monitoring purposes, are defined as 820 ft radius circles located at 70° 25.165' W, 42° 59.282' N; 70° 28.039' W, 43°

0.257' N; and 70° 27.895' W, 43° 2.280' N, respectively. The reference areas were selected based on a review of existing data and confirmed through a baseline survey to represent areas of the seafloor with similar bathymetric characteristics as the IOSN (see SMMP, p. 12).

V. Potentially Affected Entities

Because the IOSN is offshore and in deep water, as described in the previous section, it is not expected to affect near-shore entities. Persons potentially affected by this action include those who seek or might seek permits or approval to dispose of dredged material into ocean waters pursuant to the MPRSA, 33 U.S.C. 1401 to 1445. This Final Rule is expected to be primarily of relevance to: (a) persons, including organizations and government bodies, seeking MPRSA permits from the USACE to authorize the transport of dredged material for disposal into the ocean waters off the coast of southern Maine, New Hampshire, and northern Massachusetts; and (b) to the USACE itself for its own dredged material projects involving ocean disposal.

Potentially affected entities and categories of entities that may seek to use the IOSN and would be subject to the Final Rule include:

Category	Examples of potentially affected entities
Federal government	USACE (Civil Works Projects), U.S. Navy, U.S. Coast Guard, and other federal agencies.

State, local, and tribal governments	Governments owning and/or responsible for ports, harbors, and/or berths, government agencies requiring ocean disposal of dredged material associated with public works projects.
Industry and general public	Port authorities, shipyards and marine repair facilities, marinas and boatyards, and berth owners.

This table is not intended to be comprehensive, but rather provides a guide for readers regarding the types of entities that could potentially be affected by the Final Rule. EPA notes that nothing in this Final Rule alters the jurisdiction or authority of EPA, the USACE, or the types of person regulated under the MPRSA.

VI. Summary of Public Comments and EPA's Response

On September 18, 2019, EPA published a Proposed Rule in the **Federal Register** (84 FR 49075) to notify the public of EPA's proposal to designate the IOSN as an ODMDS and announcing the availability of the DEA supporting the proposal for a 30-day public comment period under Docket ID EPA-R01-OW-2019-0521. On October 9, 2019, EPA and the USACE held a public meeting in Kittery, Maine, to present the Proposed Rule and DEA, and to receive public comments. That public meeting and another post-comment period public meeting are further described in the National Environmental Policy Act (NEPA) subsection of the

Compliance with Statutory and Regulatory Authorities section of this Final Rule. The comment period ended on October 18, 2019.

EPA received fifteen comments on the Proposed Rule and DEA from the Department of Interior (DOI); the states of Maine and Massachusetts; the University of New Hampshire Shoals Marine Laboratory (SML); representatives of the fishing industry, including fin fish and lobster; environmental groups; and private citizens. EPA received comments both in support of, and in disagreement or raising concerns with, its proposed action, with some offering suggested improvements. There was some overlap among the comments received. The most significant comments received by EPA are summarized below:

- Support of designating IOSN (nine commenters)
- Concerns about possible roseate tern impacts (three commenters)
- Concerns about possible impacts to lobsters (four commenters)
- Concerns about possible impacts to whales, particularly the North Atlantic right whale, and their habitat (two commenters)
- Concerns about possible impacts to herring and cod spawning areas (three commenters)
- Request for an economic analysis and concerns about the economic impact to the fishing industry (three commenters)
- Requesting notification of haul routes for input and notification of timing of dredging to the fishing industry (five commenters)
- Requesting notification of haul routes and timing of dredging to the Isle of Shoals communities (one commenter)
- Requesting consultation with the Isle of Shoals communities about the site designation (one commenter)

- Concerns about impacts to the University of New Hampshire Isle of Shoals Marine Lab's reverse osmosis system (one commenter)
- Concern about general environmental assessment and potential impacts (one commenter)
- Request for more in-depth description of site selection process (one commenter)
- Concern over oil spills and request for an oil spill contingency plan for vessels transiting to the site (two commenters)
- Request for additional information about sediment travel and water column impacts (two commenters)
- Request for considerations of the general health of the seafloor (one commenter)
- Request for the site to be moved further offshore (two commenter)
- Concern about vessel transit to and from the site (two commenters)
- Request for a monitoring plan (one commenters)

EPA has prepared a Response to Comments document with individual responses to each group of similar comments which, along with copies of each of the public comments, have been included as Appendix J and Appendix I, respectively, of the FEA, which is available on the website identified in the **ADDRESSES** section of this notice.

In addition to preparing a Response to Comments document, EPA has addressed some of the public comments by (1) adding some new information about, and enhancing some of the descriptions of, marine resources in the vicinity of the IOSN; (2) enhancing the description of the location of the IOSN; and (3) adding a new site management protocol.

As described above, several commenters, including DOI and the SML, noted that the roseate tern, a federally-listed endangered species, was not included in the description of endangered species that may use the area in which the IOSN is located in the DEA, and that therefore its

potential presence was not considered in assessing the impact of designating the IOSN. EPA has since consulted with the USFWS on the roseate tern, in addition to other endangered and threatened species potentially using the area and has added information about the roseate tern and its potential use of this area to the FEA. As discussed in the ESA subsection of the Compliance with Statutory and Regulatory Authorities section of this Final Rule, the USFWS concurred with EPA's determination that the designation of the IOSN would not likely adversely impact any of the endangered and threatened species that may use the area of the IOSN.

A couple of commenters, including the SML, stated that the presence of whales, and particularly North Atlantic right whales, in the vicinity of the IOSN was not adequately characterized in the DEA, and that therefore the impact of designating the IOSN on these species was not adequately considered in the DEA or Proposed Rule. EPA has since consulted with NMFS on right whales and other endangered and threatened species potentially using the area and has included additional information and analysis about the right whale and its potential use of this area in the FEA. As discussed in the ESA subsection of the Compliance with Statutory and Regulatory Authorities section of this Final Rule, NMFS concurred with EPA's determination that the designation of the IOSN would not likely adversely impact any of the endangered and threatened species that may use the area of the IOSN.

One commenter noted that the description of the location of the proposed IOSN in the Proposed Rule and DEA did not reflect its proximity to the Isles of Shoals communities, mentioning only its distance from Portsmouth, NH. They also noted that the concerns of these communities should be considered in the decision-making process. EPA has now revised the description of the IOSN in the Final Rule and FEA to include its distance from Portsmouth, NH, Kittery, ME, and Eastern Island, the closest of the Isles of Shoals. EPA and the USACE also held

a public meeting after the public comment period on December 5, 2019, in Portsmouth, NH, specifically targeted to Isles of Shoals businesses and residents, to present general information about dredging and dredged material disposal, and answer clarifying questions.

A number of commenters, including two state fisheries agencies and the Massachusetts Lobstermen's Association, requested notification to the fishing industry of scheduled dredging and dredged material haul routes to avoid conflicts. EPA has included a new Special Management Practice (SMP) in the SMMP that includes timeframes for notifications, submissions of brief descriptions of operations and maps of haul routes, and procedures for the notice of any changes to the haul route.

VII. Compliance with Statutory and Regulatory Authorities

In designating the IOSN for the ocean disposal of suitable dredged material from harbors and navigation channels in southern Maine, New Hampshire, and northern Massachusetts, EPA has complied with the requirements of the MPRSA, CZMA, the Endangered Species Act (ESA), the Magnuson-Stevens Fishery Conservation and Management Act (MSFCMA), the National Historic Preservation Act (NHPA), and all other applicable legal requirements, as further described below. While it has been determined that EPA disposal site designation evaluations conducted under the MPRSA are "functionally equivalent" to NEPA reviews and are not subject to NEPA analysis requirements as a matter of law, EPA voluntarily uses NEPA procedures when evaluating the potential designation of ocean dumping sites. Those procedures also are described below. 63 FR 58045, 58046 (Oct. 29, 1988).

A. Marine Protection, Research, and Sanctuaries Act

The MPRSA authorizes EPA to designate sites for permitted ocean disposal of dredged material "that will mitigate adverse impact on the environment to the greatest extent practicable." 33 U.S.C. 1412(c). EPA regulations prescribe procedures for the designation of these sites. 40 CFR 228.4(e). EPA regulations also prescribe substantive guidelines for EPA's selection and management of disposal sites. *See generally* 40 CFR part 228. The regulations enumerate general and specific criteria for site selection, described in greater detail below. 40 CFR 228.5, 228.6.

EPA promulgates final disposal site designations at 40 CFR 228.15. To finalize a site designation, EPA must develop a site management plan which includes specific details laid out by statute. 33 U.S.C. § 1412 (c)(4). Post-designation, EPA must, with USACE, manage and monitor disposal sites. *See* 40 CFR 228.3, 228.9.

EPA's compliance with each of these statutory and regulatory requirements in designating IOSN is described in greater detail below.

1. Procedural Requirements

Site designations for dredged material are to "be made based on environmental studies of each site, regions adjacent to the site, and on historical knowledge of the impact of dredged material disposal on areas similar to such sites in physical, chemical, and biological characteristics." 40 CFR 228.4. Additionally, "the results of a disposal site evaluation and/or designation study... will be presented in support of the site designation promulgation as an environmental assessment of the impact of the use of the site for disposal, and will be used in preparation of environmental impact statement ["EIS"] for each site where such a statement is required by EPA policy." 40 CFR 228.6. EPA policy does not, however, require the preparation of an EIS for all MPRSA site designations. As described above, EPA's site designation decisions

are exempt from the requirements of NEPA, but pursuant to EPA's Voluntary NEPA Policy, the Agency nevertheless prepares NEPA analyses to support site designation decisions. *See* 63 FR 58045, 58046 (Oct. 29, 1988). EPA's Voluntary NEPA Policy does not mandate EISs for all site designations and rather leaves it to the EPA office in question to decide on a case-by-case basis what level of NEPA analysis – and EIS or an EA/FONSI – is appropriate. *See id.* ("EPA believes that decisions on preparing EISs for proposed ocean disposal sites should be made on a case-by-case basis.")

EPA has complied with all procedural requirements related to the publication of this Final Rule and associated FEA. EPA, with appropriate consultation with neighboring states and other agencies, completed an environmental assessment of the impact of designating the IOSN. Furthermore, the DEA, including the draft SMMP, and Proposed Rule were made available for public comment on September 18, 2019, through publication in the **Federal Register** and on the EPA Region 1 webpage. 84 FR 49075 (Oct. 18, 2019); https://www.epa.gov/ocean-dumping/isles-shoals-north-disposal-site. EPA has now prepared a thorough final environmental evaluation of the recommended alternative site to be designated, other alternatives sites, and other courses of action (including the "no action" option of not designating open-water disposal sites). This evaluation is presented in the FEA (and related documents) and summarized in this Final Rule. As described in the FEA, EPA has made a Finding of No Significant Impact (FONSI); thus, no environmental impact statement is required for this site designation.

2. Disposal Site Selection Criteria

EPA regulations under the MPRSA identify four general criteria and 11 specific criteria for evaluating locations for the potential designation of dredged material disposal sites. 40 CFR

228.5, 228.6. The evaluation of the IOSN with respect to the four general and 11 specific criteria is discussed in detail in the Section 4 of the FEA and supporting documents and is summarized below.

General Criteria (40 CFR 228.5)

As described in greater detail in the FEA, and summarized below, EPA has determined that the IOSN satisfies the four general criteria specified in 40 CFR 228.5.

i. Sites should be selected to minimize interference with other activities in the marine environment and regions of heavy commercial or recreational navigation, particularly avoiding areas of existing fisheries or shellfisheries (40 CFR 228.5(a)).

EPA's evaluation determined that use of the IOSN would cause minimal interference with the activities identified in the criterion. EPA and the USACE used information from a variety of sources to determine what activities might be interfered with by the disposal of dredged material at the IOSN. EPA considered recreational activities, commercial fishing areas, cultural or historically significant areas, commercial and recreational navigation, and existing scientific research activities. EPA and the USACE used Geographic Information System data to overlay the locations of various uses and natural resources of the marine environment on the disposal site location and surrounding areas (including their bathymetry). Analysis of these data indicated that use of the site would have minimal potential for interfering with other ongoing uses of the marine environment in and around the IOSN, including lobster harvesting or fishing activities. While the site is located in an area where periodic fishing activity occurs and is within the vast Gulf of Maine spawning areas for cod and herring, it is not considered a unique fishing ground or

highly significant fishery harvest area. Finally, the site is not located in shipping lanes or any other region of heavy commercial or recreational navigation. Furthermore, the site is located in an area where any other vessels could easily navigate around any disposal vessels at or near the site, and the significant water depths at the site mean that material disposed there will not interfere with navigation by extending up too high into the water column.

ii. Sites should be situated such that temporary perturbations to water quality or other environmental conditions during initial mixing caused by disposal operations would be reduced to normal ambient levels or to undetectable contaminant concentrations or effects before reaching any beach, shoreline, marine sanctuary, or known geographically limited fishery or shellfishery (40 CFR 228.5(b)).

EPA's analysis concludes that the IOSN satisfies this criterion. First, the site will be used only for the disposal of dredged material determined to be suitable for ocean disposal by application of the MPRSA's ocean dumping criteria. *See generally* 33 U.S.C. 1413; 40 CFR part 227. These criteria include provisions related to water quality and account for initial mixing. *See* 40 CFR 227.4, 227.5(d), 227.6(b) and (c), 227.13(c), 227.27, and 227.29. Data evaluated during development of the FEA show that any temporary perturbations in water quality or other environmental conditions at the site during initial mixing from disposal operations will be limited to the immediate area of the site and will neither cause any significant environmental degradation at the site nor reach any beach, shoreline, marine sanctuary, or other important natural resource area. Second, the site is a significant distance from any beach, shoreline, marine sanctuary, or known geographically limited fishery or shellfishery.

iii. The size of disposal sites should be limited in order to localize for identification and control any immediate adverse impacts, and to permit the implementation of effective monitoring and surveillance to prevent adverse long-range impacts. Size, configuration, and location are to be determined as part of the disposal site evaluation (40 CFR 228.5(d)).

EPA has determined, based on the information presented in the FEA, that the IOSN alternative is sufficiently limited in size to allow for the identification and control of any immediate adverse impacts, and to permit the implementation of effective monitoring and surveillance to prevent adverse long-range impacts. The IOSN covers approximately 2.4 nmi^2 of seafloor, which is approximately 0.006% of the seafloor surface area of the Gulf of Maine. The long history of dredged material disposal site monitoring in New England, and specifically at active and historically used dredged material disposal sites elsewhere in the Gulf of Maine, provides ample evidence that surveillance and monitoring programs are effective at determining physical, chemical, and biological impacts at sites of a similar size to the alternative sites considered in this case.

The IOSN is identified by specific coordinates spelled out in the Disposal Site Description section of this Final Rule and the FEA, and the use of precision navigation equipment in both dredged material disposal operations and monitoring efforts will enable accurate disposal operations and contribute to effective management and monitoring of the sites. Detailed plans for the management and monitoring of the IOSN are described in the SMMP (Appendix G of the FEA). Finally, as discussed herein and in the FEA, EPA has tailored the size of the IOSN based on site characteristics, such as bottom sediment type and bottom features, so that the area and boundaries of the sites are optimized for environmentally sound dredged material disposal operations.

iv. EPA will, wherever feasible, designate ocean dumping sites beyond the edge of the continental shelf and other such sites that have been historically used (40 CFR 228.5(e)).

EPA has determined that designation of the IOSN is consistent with this criterion. EPA evaluated sites beyond the edge of the continental shelf and historical disposal sites in the Gulf of Maine as part of the alternative analysis conducted for the FEA. Potential disposal areas located off the continental shelf would be infeasible due to their very substantial distance offshore, which would render them impracticable for dredging projects from the area under evaluation (i.e., ZSF). The nearest point on the continental shelf/slope boundary to Portsmouth Harbor is more than 230 miles south, about 96 miles southeast of Nantucket. The distance to the slope due east is even greater at about 270 miles. The haul distance to an off-shelf disposal site is therefore much greater than the average operational limit of the southern Maine, New Hampshire, and northern Massachusetts projects, making an off-shelf site infeasible for all projects. Additionally, the cost for evaluation and monitoring and the uncertainty of the environmental effects of off-shelf placement makes that option impracticable and undesirable. Environmental concerns include increased risk of encountering endangered species during transit, increased fuel consumption and air emissions, substantially extending the duration of dredging projects (with their own, separate, impacts), and greater potential for accidents in transit that could lead to dredged material being dumped in unintended areas.

USACE dredging and disposal records do not show evidence of dredged material ever having been placed at the area that encompasses the IOSN. The only sites within the ZSF that have been used historically are the former IOSH which, according to USACE records, was used from 1964 to 1970, and the CADS, a USACE-selected MPRSA section 103 site located off Cape

Arundel, Maine. However, neither the IOSH nor the CADS would meet the projected disposal needs because both are limited in their capacity to accept new material and both have seafloor areas that are incompatible with dredged material disposal due to the diversity of habitat and sediment types.

Specific Criteria (40 CFR 228.6)

As described in greater detail in Section 4 of the FEA, and summarized below, EPA has determined that the IOSN satisfies the eleven specific criteria set out in 40 CFR 228.6.

i. Geographical Position, Depth of Water, Bottom Topography and Distance From Coast (40 CFR 228.6(a)(1)).

Based on analyses in the FEA, EPA has concluded that the geographic position (i.e., location), water depth, bottom topography (i.e., bathymetry), and distance from coastlines of the IOSN will facilitate containment of dredged material within site boundaries and reduce the likelihood of material being transported away from the site to adjacent seafloor areas. As described in the preceding Disposal Site Description section and in the above discussion of compliance with general criteria (iii) and (iv) (40 CFR 228.5(c) and (d)), the IOSN is located far enough from shore and in deep enough water to avoid adverse impacts to the coastline.

The IOSN is a depositional area (i.e., an area characterized by low current velocities so that it will tend to retain materials placed there). Therefore, dredged material disposed at the site is expected to stay in the site and not cause adverse effects to adjacent seafloor areas. The closest points of land to the IOSN are the Isles of Shoals, with Eastern Island and Appledore Islands being approximately 6.04 nmi and 6.79 nmi respectively to the southwest of the IOSN. IOSN

also is approximately 9.55 mni southeast of Sisters Point in Kittery, Maine and approximately 10.8 nmi west of Portsmouth, New Hampshire. The site is located in waters ranging from 295 to 328 feet deep. As discussed in the FEA, the IOSN is of a sufficient depth to allow the disposal of the amount of material that is projected over the 20-year planning horizon without exceeding any depth threshold for safe navigation over the site. As a result, any impacts from dredged material disposal will be short-term and localized and, assuming compliance with other regulatory requirements described elsewhere in this document, will not contribute to any significant long-term adverse impacts in and around the IOSN.

ii. Location in Relation to Breeding, Spawning, Nursery, Feeding, or Passage Areas of Living Resources in Adult or Juvenile Phases (40 CFR 228.6(a)(2)).

EPA considered the IOSN in relation to breeding, spawning, nursery, feeding, and passage areas for adult and juvenile phases (i.e., life stages) of living resources in the Gulf of Maine. From this analysis, EPA concluded that, while disposal of suitable dredged material at the IOSN would cause some short-term, localized effects, overall, it would not cause adverse effects to the habitat functions and living resources specified in the above criterion. As previously noted, the IOSN covers approximately 2.4 nmi^2 of seafloor, which is approximately 0.006% of the seafloor surface area of the Gulf of Maine.

Generally, there are three primary ways that the transportation and disposal of dredged material could potentially adversely affect marine resources. First, disposal can cause physical impacts by injuring or burying less-mobile fish, shellfish, and benthic organisms, as well as the eggs and larvae of these less-mobile species. Second, tug and barge traffic transporting the dredged material to a disposal site could possibly collide or otherwise interfere with marine

mammals and reptiles. Third, contaminants in the dredged material could potentially bioaccumulate through the food chain. However, EPA, the USACE, and other federal and state agencies that regulate dredging and dredged material disposal administer regulatory requirements designed to prevent these types of impacts from occurring. *See, e.g.,* 40 CFR part 227.

Dredged material disposal will have some localized impacts to fish, shellfish, and benthic organisms, such as clams and worms, that are present at an ocean disposal site (or in the water column directly above the site) during a disposal event. The sediment plume may entrain and smother some fish in the water column, and may bury some fish, shellfish, and other marine organisms on the seafloor. It also may result in a short-term loss of forage habitat in the immediate disposal area, but recolonization of disposal mounds in the IOSN by benthic infauna is expected within one to three years after disposal, based on extensive monitoring at other disposal sites in New England. As discussed in the FEA (Section 7.5.2), over time, disposal mounds recover and develop abundant and diverse biological communities that are healthy and able to support species typically found in the ambient surroundings. Some organisms may burrow deeply into sediments, often up to 20 inches, and are more likely to survive a burial event.

Regarding the potential for tug and barge impacts to endangered species, EPA complied with the ESA by consulting with the National Oceanic and Atmospheric Administration's (NOAA) National Marine Fisheries Service (NMFS) and the U.S. Fish and Wildlife Service (USFWS) on EPA's determinations that designation of the IOSN would not likely adversely affect federally-listed species under their respective jurisdictions or any habitat designated as critical for such species. EPA also coordinated with NMFS under the MSFCMA on potential

impacts to essential fish habitat (EFH). Further details on these consultations are provided in the FEA and the sections below describing compliance with the ESA and MSFCMA.

To further reduce potential environmental impacts associated with dredged material disposal, the dredged material from each proposed dredging project will be subjected to the MPRSA sediment testing requirements set forth at 40 CFR part 227 to determine its suitability for ocean disposal. Suitability for ocean disposal is determined by testing the proposed dredged material for toxicity and bioaccumulation to assess the potential risk to the marine environment and human health. If it is determined that the sediment is unsuitable for ocean disposal – that is, that it may unreasonably degrade the marine environment or endanger human health via the food chain – it cannot be disposed at disposal sites designated or selected under the MPRSA. *See* 40 CFR 227.6. Therefore, EPA does not anticipate significant effects on marine organisms from the disposal of suitable dredged material at the IOSN.

EPA recognizes that dredged material disposal causes some short-term, localized adverse effects to marine organisms in the immediate vicinity of each disposal event. But because many organisms are likely to recover after any potential burial events, because dredged material disposal would be limited to suitable material, and because tugs and barges transporting dredged material take significant measures to avoid collisions with marine mammals, EPA concludes that designating the IOSN will not cause unacceptable or unreasonable adverse impacts to breeding, spawning, nursery, feeding, or passage areas of living resources in adult or juvenile phases.

iii. Location in Relation to Beaches and Other Amenity Areas (40 CFR 228.6(a)(3)).

EPA's analysis concludes that the IOSN satisfies this criterion. The IOSN is located approximately 10.8 nmi east of Portsmouth, New Hampshire, 9.55 nmi southeast of Kittery,

Maine and 6.04 nmi northeast of Eastern Island, the closest of the Isles of Shoals. The shoreward edge of the site is approximately 9 nmi from the nearest beaches in Rye, New Hampshire, and is located in waters ranging in depth from 295 to 328 feet. The IOSN is far enough away from beaches, parks, wildlife refuges, and other areas of special concern to prevent adverse impacts to these amenities. Based on information presented in Section 6.3 of the FEA, and past monitoring of disposal at other ODMDS in New England, this distance is beyond any expected movement of dredged material due to tidal motion or currents. As noted above, any temporary perturbations in water quality or other environmental conditions at the site during initial mixing from disposal operations will be limited to the immediate area of the site and will not reach any beaches, parks, wildlife refuges, or other areas of special concern.

Thus, EPA does not anticipate that the use of the IOSN would cause any adverse impacts to beaches or other amenity areas.

iv. Types and Quantities of Wastes Proposed To Be Disposed of, and Proposed Methods of Release, Including Methods of Packing the Waste, if Any (40 CFR228.6(a)(4)).

Only suitable dredged material that meets the Ocean Dumping Criteria in 40 CFR 220-228 and receives a permit or is otherwise authorized for dumping by the USACE, with which EPA concurs, will be disposed in the IOSN.

Dredged material dumped at the site is anticipated to be transported to the IOSN by either government or private contractor hopper dredges or scows with capacities ranging from 800 to 6,000 cubic yards (cy).

The volume of sediment to be dredged from federal navigation projects and non-federal marinas and boatyards in the southern Maine, New Hampshire, and northern Massachusetts

region varies greatly from year to year depending upon need and funding. However, as previously discussed, and based on the dredging history of this region, maintaining and improving these navigational features is projected to generate approximately 1.5 million cy of dredged material over the next 20 years. Some of the sediments will be beneficially used, like sand that can be used for beach nourishment, and some will be unsuitable for ocean disposal and need to be disposed of through alternative means, but the remainder of the material that is suitable for ocean disposal can be disposed of in the IOSN. Most of the dredged material that would be disposed of in the IOSN would originate from the dredging of navigation channels and harbors in the region and would consist primarily of fine-grained marine sediments that have been transported into these areas by tidal currents, riverine deposition, and upland erosion. The fine-grained material undergoes rigorous testing to confirm that it is suitable for unconfined ocean placement. The IOSN has been sized to accommodate the quantity of material expected to be placed there over the 20-year planning horizon. For all these reasons, no significant adverse impacts are expected to be associated with the types and quantities of dredged material that may be disposed at the IOSN.

v. Feasibility of Surveillance and Monitoring (40 CFR 228.6(a)(5)).

Monitoring for baseline conditions has already been conducted at the IOSN and adjacent areas by the USACE Disposal Area Monitoring System (DAMOS), and it is anticipated that monitoring and other surveillance activities will continue to be feasible at the IOSN in the future. Monitoring of EPA-designated ocean disposal sites is conducted according to the approved SMMP. The current approved SMMP for the IOSN is included as Appendix G of the FEA. EPA must schedule the SMMP for review and revision at least every ten years. 33 U.S.C. 1412. As a

depositional site that will retain the dredged material placed there, the IOSN is conducive to the type of monitoring most commonly conducted at dredged material disposal sites, including side-scan sonar, sediment profile imaging, and sediment grab sampling.

vi. Dispersal, Horizontal Transport and Vertical Mixing Characteristics of the Area, Including Prevailing Current Direction and Velocity, if Any (40 CFR 228.6(a)(6)).

The IOSN site meets this criterion. The IOSN is located in open ocean with water depths ranging from approximately 295 to 328 feet. Water circulation in the vicinity of the IOSN is strongly influenced by the counterclockwise flow, or gyre, normally occurring in the Gulf of Maine. The circulation of the Gulf consists of two circular gyres, one counterclockwise within the interior of the Gulf, and the second, clockwise over Georges Bank. Maine coastal waters are included as the western portion of the counterclockwise gyre within the Gulf. Current patterns in the vicinity of the IOSN are typified by coastal-parallel, non-tidal southerly drift currents generated by the overall circulation of the Gulf of Maine.

The fine-grained sediments that dominate the area of the IOSN indicate that the site is in a depositional area. Consequently, any material dispose of at the IOSN would likely remain within the site and not be significantly affected or transported away from the site by currents.

vii. Existence and Effects of Current and Previous Discharges and Dumping in the Area (Including Cumulative Effects) (40 CFR 228.6(a)(7)).

USACE dredging and disposal records and site monitoring do not show any evidence of dredged material having been disposed of within the current site boundaries of the IOSN. Dredged material from the southern Maine, New Hampshire, and northern Massachusetts coastal

region was historically disposed of at either the CADS or the former, historically used IOSH, which was used from 1964 to 1970.

In general, results from decades of monitoring of current and historically used ODMDS in the New England region indicate that the disposal of dredged material found suitable for ocean disposal does not significantly alter the long-term functions and values of seafloor bottom as potential habitat for biological communities or contribute to long-term changes in water quality or water circulation at the disposal sites. EPA expects this to also be the case for the IOSN.

viii. Interference with Shipping, Fishing, Recreation, Mineral Extraction, Desalination, Fish and Shellfish Culture, Areas of Special Scientific Importance and Other Legitimate Uses of the Ocean (40 CFR 228.6(a)(8)).

In evaluating whether disposal activity at the site could interfere with shipping, fishing, recreation, mineral extraction, desalination, fish or shellfish culture, areas of scientific importance, and other legitimate uses of the ocean, EPA considered both the effects of disposing dredged material within the IOSN, and any effects from vessel traffic associated with transporting the dredged material to the disposal site. From this evaluation, EPA concluded there would be no unacceptable or unreasonable adverse effects on the considerations noted in this criterion. Some of the factors listed in this criterion have already been discussed above due to the overlap of this criterion with aspects of certain other criteria. Nevertheless, EPA will address each point below.

EPA does not anticipate conflicts with commercial navigation at the IOSN. The Portsmouth Pilots and the USACE discussed the IOSN disposal site location and its anticipated use with respect to navigation transit impacts (as discussed in more detail in Section 4.4.1 of the FEA).

Vessels transiting to and from Portsmouth Harbor from the south and southeast follow a route inshore of the Isles of Shoals, which will avoid the area of the IOSN. Vessels approaching or departing to and from the east and northeast (toward Maine and Canada) do cross the general area of the IOSN disposal site. The pilots stated that conflicts between dredged material disposal operations and shipping for large and small projects can be avoided, however, by adequate notice to mariners of disposal activities and frequent marine communication between the disposal tugs and the Portsmouth Pilots. Given the open-water conditions around the IOSN and the relative infrequency of dredged material disposal operations, EPA concludes that any conflicts with vessels traveling in the vicinity of the IOSN should be easily managed in a safe, efficient manner.

EPA also carefully evaluated the potential effects of designating the IOSN on commercial and recreational fishing for both finfish and shellfish (including lobster) and concluded that there would be no unreasonable or unacceptable adverse effects. As discussed above in relation to other site evaluation criteria, disposal of dredged material will only have short-term, incidental, and insignificant effects on organisms in the IOSN and no appreciable effects beyond the site. Because dredged material disposal at other ODMDS in New England has not been found to have significant adverse effects on fishing, the similar projected levels of future disposal activities at the IOSN are not expected to have any significant adverse effects.

The four main reasons that EPA concluded that no unacceptable adverse effects would occur from disposal of dredged material at the proposed site are discussed below. First, EPA has concluded that any contaminants in material permitted for ocean disposal – having satisfied the dredged material criteria in the regulations that restrict any toxicity and bioaccumulation – will not cause any significant adverse effects to fish, shellfish, or other aquatic organisms. Because

the IOSN is a depositional site, dredged material disposed within the site is expected to remain there.

Second, the IOSN does not encompass any especially important, sensitive, or limited habitat for the Gulf of Maine's fish and shellfish. While the site is within the greater Gulf of Maine cod and herring spawning habitat, as previously stated, the IOSN only covers approximately 2.4 nmi^2 of seafloor, which is approximately 0.006% of the total seafloor surface area of the Gulf of Maine. Numerous studies and data reviewed by EPA and the USACE indicate that there is low potential for any future incremental risk from the ocean disposal of dredged sediments at the IOSN in either the long- or short-term.

Third, while EPA found that a small number of demersal fish (e.g., winter flounder), shellfish (e.g., clams and lobsters), benthic organisms (e.g., worms), and zooplankton and phytoplankton could be lost due to the physical effects of disposal (e.g., burial of organisms on the seafloor by dredged material and entrainment of plankton in the water column by dredged material upon its release from a disposal barge), EPA also determined that these minor, temporary adverse effects would be neither unreasonable nor unacceptable. This determination was based on EPA's conclusion that the numbers of organisms potentially affected represent only a minuscule percentage of those in the Gulf of Maine, and findings from past monitoring in the region consistently show the rapid recovery of the benthic community in dredged material disposal sites.

Fourth, EPA has determined that vessel traffic associated with dredged material disposal will not have any unreasonable or unacceptable adverse effects on fishing. The USACE has agreed to notify state fisheries management agencies within a prescribed timeframe before the commencement of dredging and disposal activities at the IOSN. An SMP in this regard has been

incorporated into the SMMP. The SMP includes timeframes for notifications, submissions of brief descriptions of operations and maps of haul routes, and procedures for the notice of any changes to the haul route. The USACE will include these conditions in individual permits or authorizations on a project-by-project basis.

There currently are no mineral extraction activities or desalinization facilities in the Gulf of Maine region with which disposal activity could potentially interfere. No finfish aquaculture currently takes place in the southeastern Gulf of Maine. Finally, the IOSN is not in an area of special scientific importance. Accordingly, disposing of dredged material at the IOSN will not interfere with any of the activities described in this criterion or other legitimate uses of this part of the Gulf of Maine.

In addition, the designation of the IOSN site has been determined by the EPA to be consistent with the Maine, New Hampshire, and Massachusetts coastal zone management programs, as discussed in the CZMA section below (*see also* Appendix H of the FEA). The Maine, New Hampshire and Massachusetts coastal zone management programs have concurred with EPA's determinations.

ix. The Existing Water Quality and Ecology of the Sites as Determined by Available Data or by Trend Assessment or Baseline Surveys (40 CFR 228.6(a)(9)).

EPA's analysis of existing water quality and ecological conditions at the site, which was based on available data, trend assessments, and baseline surveys, indicates that use of the IOSN will cause no unacceptable or unreasonable adverse environmental effects. Considerations related to water quality and various ecological factors (e.g., sediment quality, benthic organisms, fish and shellfish) have already been discussed above in relation to other site selection criteria

and are discussed in detail in the FEA and supporting documents. In considering this criterion, EPA considered existing water quality and sediment quality data collected in the Gulf of Maine, including from the USACE's Disposal Area Monitoring System (DAMOS), as well as water quality data from EPA's coastal nutrient criteria and trend monitoring efforts. As discussed herein, EPA has determined that disposal of suitable dredged material at the IOSN should not cause any significant adverse environmental effects to water quality or to ecological conditions at the site. EPA and the USACE have prepared an SMMP for the IOSN to guide future management and monitoring of the site.

x. Potentiality for the Development or Recruitment of Nuisance Species in the Disposal Sites (40 CFR 228.6(a)(10)).

Monitoring at disposal sites elsewhere in the Gulf of Maine over the past 35 years has shown no recruitment of nuisance (invasive, non-native) species and no such adverse effects are expected to occur at the IOSN in the future. EPA and the USACE will continue to monitor EPA-designated sites in the Gulf of Maine under their respective SMMPs, which include a "management focus" on "changes in composition and numbers of pelagic, demersal, or benthic biota at or near the disposal sites" (SMMP, Appendix G of the FEA).

In addition, source materials from projects in southern Maine, New Hampshire, and northern Massachusetts to be dredged and transported to the disposal site historically have been classified as marine silts and clays, which are similar to the sediments found at the IOSN site. As previously discussed, any material proposed for ocean disposal at the IOSN site would be subject to an evaluation of sediment quality. Therefore, it is highly unlikely that any nuisance species

could be established at the proposed disposal site since habitat (i.e., sediment type) or contaminant levels are unlikely to change over the long-term use of the site.

xi. Existence at or in Close Proximity to the Sites of Any Significant Natural or Cultural Feature of Historical Importance (40 CFR 228.6(a)(11)).

There are no natural features of historical importance within the boundaries of the IOSN, and the cultural resources that would have the greatest potential for being impacted in this area would be shipwrecks. As discussed in Section 6.7 of the FEA, side-scan sonar of the IOSN was conducted and no potential shipwrecks or other cultural feature were noted within its boundaries. The cultural resource literature search conducted for the proposed IOSN area did not identify any shipwrecks in the vicinity. While undiscovered shipwrecks could occur in the area, it is unlikely based on the results of the side-scan survey of the area. As discussed in the NHPA section below, EPA consulted with the state historic preservation offices (SHPO) for Maine and New Hampshire and they confirmed these findings. Based on this information, it is unlikely that any significant cultural resources will be affected from the designation and use of the disposal site.

In addition, Jeffery's Ledge, located to the east of the IOSN, is an important feeding ground for humpback whales and North Atlantic right whales in the summer and fall months and serves as a prime recreational whale watching area. No impacts to this area are expected based on disposal of suitable dredged material at the IOSN. However, procedures outlined in the SMMP will be followed to ensure whales are protected.

3. Disposal Site Management and Monitoring (40 CFR 228.3, 228.7, 228.8 and 228.9)

In accordance with Section 102(c)(3) of the MPRSA, EPA, in conjunction with the USACE, has developed a site management and monitoring plan for the IOSN (the "SMMP") which includes a baseline assessment of conditions at the site, a monitoring program for the site, special management conditions necessary to protect the environment, consideration of the quantity and quality of material to be disposed at the site, consideration of the long-term plan for the site (including closure), and a schedule for review and revision of the plan. 33 U.S.C. 1412(c). EPA Region 1 is responsible for managing the IOSN pursuant to this plan and works with the USACE New England Division to do so. *See* 40 CFR 228.3.

The monitoring program "may include baseline or trend assessment surveys by EPA" or other entities. 40 CFR 228.9. It may also incorporate "data collected from the use of automatic sampling buoys, satellites or in situ platforms, and from experimental programs." *Id*. Further, "EPA will require the full participation of permittees, and encourage the full participation of other Federal and State and local agencies in the development and implementation of disposal site monitoring programs." *Id*. EPA may limit the "times or rates" of dumping "so that the limits for the site as specified in the site designation are not exceeded." 40 CFR 228.8. *See also* 33 U.S.C. § 1412(c)(1) and (2).

In accordance with these statutory and regulatory requirements, EPA and the USACE have developed an SMMP for the IOSN that includes provisions that will be included in USACE permit and authorizations to ensure site management practices are protective of the marine environment and public health. The SMMP, available at Appendix G to the FEA, describes disposal site management practices that are generally applicable to all EPA-designated ODMDS, as well as site-specific Special Management Practices. It describes the tiered monitoring approach that is used for all ODMDS in New England that assesses whether disposal activities

are occurring in compliance with permit and site restrictions; supports evaluation of short- and long-term fate of material based on MPRSA site impact evaluation criteria; and supports assessment of potential significant adverse environmental impacts from dredged material disposal at the site.

B. National Environmental Policy Act

NEPA requires the public analysis of the potential environmental effects of proposed federal agency actions and reasonable alternative courses of action to ensure that these effects, and the differences in effects among the different alternatives, are understood. *See generally* 42 U.S.C. 4321 *et seq.* The goal of this analysis is to ensure high quality, informed, and transparent decision-making, to facilitate avoiding or minimizing any adverse effects of proposed actions, and to help restore and enhance environmental quality. *See generally* 40 CFR 6.100(a),1500.1(c) and 1500.2(d)–(f). NEPA requires coordination with other federal and state agencies and public involvement throughout the decision-making process. *See* 40 CFR 6.400(a), 1503, 1501.7, and1506.6.

EPA disposal site designation evaluations conducted under the MPRSA have been determined to be "functionally equivalent" to NEPA reviews, so that they are not subject to NEPA analysis requirements as a matter of law. Nevertheless, as a matter of policy, EPA voluntarily uses NEPA procedures when evaluating the potential designation of ocean dumping sites. 63 FR 58045, 58046 (October 29, 1998) ("EPA voluntarily will follow NEPA procedures in ocean disposal site designations under MPRSA and these procedures provide for consultation with the states" and EPA "believes that decisions on preparing EISs for proposed ocean disposal sites should be made on a case-by-case basis.") Furthermore, EPA has clarified that "[t]he

voluntary preparation of [NEPA] documents in no way legally subjects the Agency to NEPA's requirements." Id.

Consistent with its voluntary NEPA policy, EPA has undertaken a NEPA analysis to support its decision-making process for the designation of the IOSN. In this case, EPA decided to prepare an Environmental Assessment, which is done for proposed actions when the significance of the environmental impact is not clearly established. Upon completion of the FEA, EPA also made a Finding of No Significant Impact, described below.

1. Final Environmental Assessment and Finding of No Significant Impact

The FEA evaluates whether an ODMDS should be designated to serve the southern Maine, New Hampshire, and southern Maine coastal region. The FEA describes the purpose and need for any such designation, and evaluates several alternatives to this action, including the option of "no action" (i.e., no designation). Based on this evaluation, EPA concludes that designation of the IOSN under the MPRSA is the preferred alternative. EPA also is issuing a FONSI with the FEA that presents the reasons why the agency projects that no significant environmental impacts will occur from implementation of the action.

As stated in the Purpose and Need section, the purpose of this designation is to provide a long-term, ODMDS as a potential option for the future disposal of suitable dredged material. The action is necessary because periodic dredging and dredged material disposal is unavoidably necessary to maintain safe navigation and marine commerce in ports and harbors in the southern Maine, New Hampshire, and northern Massachusetts coastal region. As previously noted, dredging in southern Maine, New Hampshire, and northern Massachusetts is projected to generate approximately 1.5 mcy of dredged material over the next 20 years.

EPA evaluated potential alternatives to ocean disposal in the southern Maine, New Hampshire, and northern Massachusetts coastal region but determined that none were sufficient to meet the projected regional dredging needs. In accordance with EPA regulations, use of alternatives to ocean disposal will be required for dredged material management when they provide a practicable, environmentally preferable option for the dredged material from any particular disposal project. 40 CFR 227.16. When no such practicable alternatives exist, however, EPA's designation of the IOSN will provide an ocean disposal site as a potential management option for dredged material regulated under the MPRSA that has been tested and determined to be environmentally suitable for ocean disposal. Sediments found to be unsuitable for ocean disposal will not be authorized for placement at a disposal site designated by EPA under the MPRSA and will have to be managed in other ways.

2. Alternatives Analysis

EPA analyzed alternatives for the management of dredged material from navigation channels and harbors in the southern Maine, New Hampshire, and northern Massachusetts coastal region. This analysis evaluated several different potential alternatives, including ocean disposal sites in the ZSF (described in the Purpose and Need section), upland disposal, beneficial uses, and the no-action alternative. From this analysis, EPA determined that at least one ocean disposal site, the IOSN, was necessary to provide sufficient capacity to meet the long-term dredged material disposal needs of the region in the event that, as expected, practicable alternatives to ocean disposal are not available for all the material.

EPA's initial screening of alternatives, which involved input from other federal and state agencies, led to the determination that the ocean disposal sites were the most environmentally

sound, cost-effective, and operationally feasible options for the full quantity of dredged material expected to be found suitable for ocean disposal over the 20-year planning horizon. Regardless of this conclusion, in practice, each individual dredging project will be analyzed on a case-specific basis and ocean disposal of dredged material at a designated site would only be permitted or authorized when there is a need for such disposal (i.e., there are no practicable, environmentally preferable alternatives). *See* 40 CFR 227.2(a)(1), 227.16(b).

3. Public Involvement

EPA released the DEA, titled "Draft Environmental Assessment and Evaluation Study for Designation of an Ocean Dredged Material Disposal Site to serve the Southern Maine, New Hampshire, and Northern Massachusetts Region," on September 18, 2019, for a 30-day public comment period. 84 FR 49075 (Sep. 18, 2019). EPA held one public meeting during the public comment period on October 9, at 6 pm in Kittery, Maine, at which EPA and the USACE made a presentation on the Proposed Rule and DEA and received public comments. EPA also received subsequent written comments both in support of and expressing concerns about EPA's proposed action as described in the DEA and Proposed Rule. Many commenters also asked questions or offered suggestions. EPA made clarifying statements during the public meeting but did not substantively respond to public comments at that time.

EPA and the USACE also held a public meeting after the public comment period on December 5, 2019, in Portsmouth, New Hampshire, to present general information about dredging and dredged material disposal and answer clarifying questions, but again did not substantively respond to specific comments about the IOSN. EPA did not receive any new comments on the Proposed Rule and DEA at this meeting. Appendix I of the FEA includes the

public comments EPA received on the DEA and Proposed Rule. Appendix J of the FEA provides a summary of those comments and EPA's responses to those comments. EPA also has summarized the more significant comments in Section VI of the preamble to this Final Rule.

4. Interagency Coordination

EPA coordinated with a wide range of federal and state agencies throughout the development of the Final Rule and FEA. EPA worked closely with the USACE because of its knowledge concerning the region's dredging needs, its technical expertise in monitoring dredged material disposal sites and assessing the environmental effects of dredging and dredged material disposal, and its history in the permitting of dredging and dredged material disposal in the Gulf of Maine and elsewhere. To take advantage of additional expertise held by other entities, and to promote strong inter-agency communications, EPA also consulted and/or coordinated with the USFWS; the NOAA NMFS; the New Hampshire Department of Environmental Services (NH DES); the New Hampshire Department of Fish and Game; the Maine Department of Environmental Protection; the Maine Department of Marine Resources (ME DMR); the Maine Geological Service; the Massachusetts Division of Marine Fisheries; and the Massachusetts Office of Coastal Zone Management (MCZM).

EPA communicated with the cooperating federal and state agencies throughout the site designation process to keep them apprised of progress on the project and to solicit input. EPA conducted two IOSN interagency meetings, in May 2016 and December 2018, to solicit data sources and concerns, to review progress, and to receive feedback on the proposed action. The proposed action also was discussed with federal and state agencies at New England Regional Dredging Team meetings in February 2019, June 2019, September 2019, February 2020, and

June 2020, and at Federal Mid-Level Managers meetings (EPA, USACE, NOAA, and USFWS) in June 2018, December 2018, November 2019, and May 2020. Lastly, it has consistently been an agenda item at the Maine, New Hampshire and Massachusetts state dredging team meetings since 2016. EPA provided the Proposed Rule and DEA for formal comment by cooperating agencies and EPA has since been in regular contact with representatives of these agencies throughout the development of the Final Rule and FEA.

5. Tribal Consultation

On July 5, 2019, EPA sent letters to all federally-recognized tribes in Maine offering to consult with them on the proposed designation of the IOSN. The Houlton Band of Maliseet Indians responded with a request for government-to-government consultation, which occurred via teleconference on August 13, 2019. EPA also presented the project on an EPA Regional Tribal Operations Committee teleconference, which includes New England Tribal environmental directors, on August 14, 2019. Comments provided during the consultation and RTOC teleconference were incorporated in the Proposed Rule and DEA prior to their release for public comment on September 18, 2020.

C. Coastal Zone Management Act

The CZMA, 16 U.S.C. 1451, *et seq.*, authorizes states to establish coastal zone management programs to develop and enforce policies to protect their coastal resources and promote uses of those resources that are desired by the state. These coastal zone management programs must be approved by the NOAA Office of Coastal Resources Management, which is responsible for administering the CZMA. Federal agencies must provide relevant states with a determination

that each federal agency activity, whether taking place within or outside the coastal zone, that affects any land or water use or natural resource of the state's coastal zone, will be carried out in a manner consistent to the maximum extent practicable with the enforceable policies of the state's approved coastal zone management program. 16 U.S.C. 1456. EPA's compliance with the CZMA is described below.

Based on the evaluations presented in the FEA and supporting documents, and a review of the federally approved New Hampshire, Maine, and Massachusetts coastal zone programs and policies, EPA determined that designation of the IOSN for ocean dredged material disposal under the MPRSA is fully consistent or consistent to the maximum extent practicable with the enforceable policies of the coastal zone management programs of New Hampshire, Maine, and Massachusetts. EPA provided a written determination to that effect to the NH DES Coastal Program, the ME DMR Coastal Program, and MCZM within the statutory and regulatory mandated timeframes. All three state coastal zone management programs concurred with EPA's determination that the designation of the IOSN is consistent with the states' enforceable program policies (Appendix H of the FEA).

In EPA's view, there are several broad reasons why designation of the IOSN is consistent with the applicable, enforceable policies of the states' coastal zone programs. First, the designation is not expected to cause any significant adverse impacts to the marine environment, coastal resources, or uses of the coastal zone. Indeed, EPA expects the designation to benefit uses involving navigation and berthing of vessels by facilitating needed dredging, and to benefit the environment by concentrating any ocean disposal of dredged material at a single, environmentally appropriate site designated by EPA and subject to the previously described SMMP. Second, designation of the site does not actually authorize the disposal of any dredged

material at the site, because any proposal to dispose dredged material from a particular project at a designated site will be subject to a case-specific evaluation, including CZMA review, and be allowed only if: (a) the material satisfies the requirements of the MPRSA, Ocean Dumping Regulations, and other legal requirements, such as those under the CZMA; and (b) no practicable alternative method of management with less adverse environmental impact can be identified. Third, the designated disposal site will be managed and monitored pursuant to an SMMP and if adverse impacts are identified, use of the site will be modified to reduce or eliminate those impacts. Such modification could further restrict, or even terminate, use of the site, if appropriate. *See* 40 CFR 228.3, 228.11. In addition, the IOSN is located outside the coastal zone of all three states, so disposal of dredged material at the site will not directly affect the coastal zone of any of the three states. That said, designation of the IOSN could indirectly affect the states' coastal zones because it could facilitate dredging projects within these coastal zones and result in vessel trips through these coastal zones to take dredged material out to the site. Nevertheless, these indirect impacts should not be problematic because dredging projects themselves will have to satisfy federal and state permitting requirements, including CZMA review, and preventing such dredging projects could harm public use of the coastal zone for vessel navigation and berthing. Moreover, as discussed in the record for this decision, vessels taking dredged material to the IOSN should be able to safely navigate to the site. Indeed, without the IOSN, vessels would still have to haul dredged material to other sites, or dredging projects would be cancelled, which would, itself, result in reduced navigational safety and the risk of accidents.

D. Endangered Species Act

Under section 7(a)(2) of the ESA, 16 U.S.C. 1536(a)(2), federal agencies are required to ensure that their actions are "not likely to jeopardize the continued existence of any endangered species or result in the destruction or adverse modification of habitat of such species, which is determined to be critical." Depending on the species involved, a federal agency is required to consult with NMFS and/or USFWS if the agency's action "may affect" an endangered or threatened species or its critical habitat. 50 CFR 402.14(a). Thus, the ESA requires consultation with NMFS and/or USFWS to address potential impacts to threatened and endangered species that may occur at the dredged material disposal site from dredged material disposal there.

To comply with the ESA, EPA coordinated and consulted with NMFS and USFWS (Appendix H of the FEA). EPA determined that the designation of the IOSN is not likely to result in adverse impacts to threatened or endangered species, species of concern, or designated critical habitat. In addition, the USACE will, as appropriate, consult with the NMFS and USFWS for individual permitted projects and federal navigation projects to further ensure that they will satisfy the ESA.

Based on its knowledge, expertise and EPA's effects analysis, NMFS concurred with EPA's determination that the site designation is not likely to adversely affect any NMFS ESA-listed species or designated critical habitat and therefore no further consultation pursuant to Section 7 of the ESA is required. USFWS also concurred with EPA's determination that the designation of IOSN is not likely to adversely affect USFWS ESA-listed species, specifically the roseate tern. Its concurrence was based on that fact that: (1) disposal effects from turbidity, sedimentation and changes in water quality will be of short duration and limited to a negligible portion of the roseate tern's foraging habitat in the vicinity of Seavey Island; (2) disposal events would happen infrequently and the likelihood of disposal operations coinciding with roseate tern presence is

discountable; and (3) EPA's designation of IOSN does not authorize any specific disposal events and such specific disposal events, and their associated effects, would be addressed through permitting by the USACE (Appendix H of FEA).

E. Magnuson-Stevens Fishery Conservation and Management Act

The MSFCMA, 16 U.S.C. 1801 *et seq.*, requires the designation of essential fish habitat (EFH) for federally managed species of fish and shellfish. The goal of these provisions is to ensure that EFH is not adversely impacted by fishing or other human activities, including dredged material disposal, and to further the enhancement of these habitats, thereby protecting both ecosystem health and the fisheries industries. Pursuant to section 305(b)(2) of the MSFCMA, federal agencies are required to consult with NMFS regarding any action they authorize, fund, or undertake that may adversely affect EFH. An adverse effect has been defined by the Act as, "[a]ny impact which reduces the quality and/or quantity of EFH [and] may include direct (e.g., contamination or physical disruption), indirect (e.g., loss of prey, reduction in species' fecundity), site-specific or habitat-wide impacts, including individual, cumulative, or synergistic consequences of actions." 50 CFR 600.810(a).

EPA has consulted with NMFS to ensure compliance with the EFH provisions of the MSFCMA and has prepared an essential fish habitat assessment in compliance with the Act. NMFS concurred with EPA's assessment, determined that adverse effects to federally-managed species and EFH will be minimal and therefore had no conservation recommendations to provide (Appendix H of the FEA).

F. National Historic Preservation Act

The NHPA, 54 U.S.C. 300101 et seq (formerly 16 U.S.C. 470 to 470a-2), requires federal agencies to take into account the effect of their actions on districts, sites, buildings, structures, or objects, included in, or eligible for inclusion in, the National Register of Historical Places. EPA submitted a consultation letter to the New Hampshire and Maine State Historic Preservation Offices (SHPO) on July 27, 2020. Both the Maine and New Hampshire SHPOs provided a letter of concurrence with EPA's determination that no historic properties (architectural or archaeological) will be affected by this site designation (Appendix H of FEA).

VIII. Supporting Documents

1. *EPA Region 1/USACE NAE. 2020. Final Environmental Assessment and Evaluation Study for Designation of an Ocean Dredged Material Disposal Site for the Southern Maine, New Hampshire, and Northern Massachusetts Coastal Region. U.S. Environmental Protection Agency, Region 1, Boston, MA and U.S. Army Corps of Engineers, New England District, Concord, MA. September 2020.*

2. *EPA Region 1/USACE NAE. 2004. Regional Implementation Manual for the Evaluation of Dredged Material Proposed for Disposal in New England Waters. U.S. Environmental Protection Agency, Region 1, Boston, MA, and U.S. Army Corps of Engineers, New England District, Concord, MA. April 2004.*

3. *EPA/USACE. 1991. Evaluation of Dredged Material Proposed for Ocean Disposal-Testing Manual. U.S. Environmental Protection Agency, Washington, DC, and U.S. Army Corps of Engineers, Washington, DC. EPA– 503/8–91/001. February 1991.*

4. *EPA/USACE. 1984. General Approach to Designation Studies for Ocean Dredged Material Disposal Sites. U.S. Environmental Protection Agency and U.S. Army Corps of Engineers, Washington, DC. 1984.*

5. *EPA. 1986. Ocean Dumping Site Designation Delegation Handbook for Dredged Material. U.S. Environmental Protection Agency, Office of Marine and Estuarine Protection, Washington, DC. Sept. 30, 1986.*

IX. Statutory and Executive Order Reviews

1. *Executive Order 12866: Regulatory Planning and Review and Executive Order 13563: Improving Regulation and Regulatory Review*

This action is not a significant regulatory action, as defined in the Executive Order, and was therefore not submitted to the Office of Management and Budget (OMB) for review.

2. *Paperwork Reduction Act (PRA)*

This action does not impose an information collection burden under the PRA because it would not require persons to obtain, maintain, retain, report, or publicly disclose information to or for a federal agency.

3. *Regulatory Flexibility Act (RFA)*

This action will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (RFA). Rather, this action would provide a cost-effective, environmentally acceptable alternative for the disposal of dredged material for many small marina and boat yard operators in the region.

4. *Unfunded Mandates Reform Act (UMRA)*

This action does not contain any unfunded mandate as described in UMRA, 2 U.S.C. 1531–1538, and does not significantly or uniquely affect small governments. The action imposes no enforceable duty on any state, local, or tribal governments or the private sector.

5. *Executive Order 13132: Federalism*

This action does not have federalism implications. It will not have substantial direct effects on the states, on the relationship between the federal government and the states, or on the distribution of power and responsibilities among the various levels of government.

6. *Executive Order 13175: Consultation and Coordination with Indian Tribal Governments*

This action does not have tribal implications as specified in Executive Order 13175 because it will not have substantial direct effects on Indian tribes, on the relationship between the federal government and Indian Tribes, or the distribution of power and responsibilities between the federal government and Indian Tribes. As described in the Tribal Consultation subsection of the Compliance with Statutory and Regulatory Authorities section, EPA consulted with the potentially affected Indian tribes in making this determination.

7. *Executive Order 13045: Protection of Children from Environmental Health Risks and Safety Risks*

This action is not subject to Executive Order 13045 because it is not economically significant as defined in Executive Order 12866, and because the environmental health or safety risks addressed by this action do not present a disproportionate risk to children.

8. Executive Order 13211: Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution or Use

This action is not subject to Executive Order 13211, because it is not a significant regulatory action under Executive Order 12866.

9. National Technology Transfer and Advancement Act (NTTAA)

This rulemaking does not involve technical standards.

10. Executive Order 12898: Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations

The EPA believes the human health or environmental risk addressed by this action will not have a disproportionately high and adverse human health or environmental effects on minority, low-income, or indigenous populations.

11. Executive Order 13158: Marine Protected Areas

Executive Order 13158 (65 FR 34909, May 31, 2000) requires EPA to "expeditiously propose new science-based regulations, as necessary, to ensure appropriate levels of protection for the marine environment." EPA may take action to enhance or expand protection of existing marine protected areas and to establish or recommend, as appropriate, new marine protected

areas. The purpose of the Executive Order is to protect the significant natural and cultural resources within the marine environment, which means, “those areas of coastal and ocean waters, the Great Lakes and their connecting waters, and submerged lands thereunder, over which the United States exercises jurisdiction, consistent with international law.”

The EPA expects that this action will have no significant adverse impacts on the ocean and coastal waters off southern Maine, New Hampshire, and northern Massachusetts or the organisms that inhabit them.

12. Executive Order 13840: Regarding the Ocean Policy to Advance the Economic, Security, and Environmental Interests of the United States

The policies in section 2 of Executive Order 13840 (83 FR 29341, June 19, 2019) include, among others, the following: "It shall be the policy of the United States to: (a) coordinate the activities of executive departments and agencies (agencies) regarding ocean-related matters to ensure effective management of ocean, coastal, and Great Lakes waters and to provide economic, security, and environmental benefits for present and future generations; [… and] (d) facilitate the economic growth of coastal communities and promote ocean industries, which employ millions of Americans, advance ocean science and technology, feed the American people, transport American goods, expand recreational opportunities, and enhance America’s energy security…." EPA, in developing this Final Rule, coordinated extensively with other federal and state agencies, and potentially affected stakeholders, to ensure effective management of dredging and dredged material by providing a cost-effective, environmentally acceptable alternative for the disposal of such material. The availability of such an ocean disposal site supports the economic

growth of coastal communities and ocean industries, which will be able to maintain safe and efficient navigation through the ports and channels in a cost-effective manner.

13. Executive Order 13771: Reducing Regulation and Controlling Regulatory Costs

This action is not a ‘‘significant regulatory action’’ under the terms of Executive Order 12866 (58 FR 51735, October 3, 1993) and is, therefore, not subject to review under Executive Order 13771. See OMB, ‘‘Guidance Implementing Executive Order 13771, Titled ‘‘Reducing Regulation and Controlling Regulatory Costs’’ (M–17–21) (April 5, 2017), p. 3 (‘‘An ‘E.O. 13771 Regulatory Action’ is: (i) A significant regulatory action as defined in section 3(f) of E.O. 12866 that has been finalized and that imposes total costs greater than zero. . . .’’).

14. Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801 et seq., as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A ‘‘major rule’’ cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a major rule as defined by 5 U.S.C. 804(2). This rule will be effective 30 days after date of publication.

List of Subjects in 40 CFR Part 228

Environmental protection, Water pollution control.

Dated: September 18, 2020.

Dennis Deziel

Regional Administrator, EPA Region 1.

For the reasons stated in the preamble, title 40, Chapter I, of the Code of Federal Regulations is amended as set forth below.

PART 228—CRITERIA FOR THE MANAGEMENT OF DISPOSAL SITES FOR OCEAN DUMPING

1. The authority citation for part 228 continues to read as follows:

Authority: 33 U.S.C. 1412 and 1418.

2. Amend §228.15 by adding paragraph (b)(7) to read as follows:

§ 228.15 Dumping sites designated on a final basis.

*****

(b) * * *

(7) Isles of Shoals North Dredged Material Disposal Site (IOSN).

(i) *Location:* A 8,530-foot (2,600-meter) diameter circle on the seafloor with its center located at 70° 26.995’ W and 43° 1.142’ N.

(ii) *Size:* 1,312 acres (57,150,000 square feet).

(iii) *Depth:* Ranges from 295 to 328 feet (90 to 100 m).

(iv) *Primary use:* Dredged material disposal.

(v) *Period of use:* Continuing use.

(vi) *Restrictions:* Disposal shall be limited to dredged material that meets the requirements of the MPRSA and its implementing regulations at 40 CFR parts 220 through 228.

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